

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AUTHORS GUILD, DAVID BALDACCI,
MARY BLY, MICHAEL CONNELLY,
SYLVIA DAY, JONATHAN FRANZEN,
JOHN GRISHAM, ELIN HILDERBRAND,
CHRISTINA BAKER KLINE, MAYA
SHANBHAG LANG, VICTOR LAVALLE,
GEORGE R.R. MARTIN, JODI PICOULT,
DOUGLAS PRESTON, ROXANA
ROBINSON, GEORGE SAUNDERS, SCOTT
TUROW, and RACHEL VAIL, individually and
on behalf of others similarly situated,

Plaintiffs,

v.

OPENAI INC., OPENAI OPCO LLC, OPENAI
GP LLC, OPENAI LLC, OPENAI GLOBAL
LLC, OAI CORPORATION LLC, OPENAI
HOLDINGS LLC, OPENAI STARTUP FUND
I LP, OPENAI STARTUP FUND GP I
LLC, OPENAI STARTUP FUND
MANAGEMENT LLC, and MICROSOFT
CORPORATION,

Defendants.

JONATHAN ALTER, KAI BIRD, TAYLOR
BRANCH, RICH COHEN, EUGENE LINDEN,
DANIEL OKRENT, JULIAN SANCTON,
HAMPTON SIDES, STACY SCHIFF, JAMES
SHAPIRO, JIA TOLENTINO, and SIMON
WINCHESTER, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

OPENAI, INC., OPENAI GP, LLC, OPENAI,
LLC, OPENAI OPCO LLC, OPENAI GLOBAL
LLC, OAI CORPORATION, LLC, OPENAI
HOLDINGS, LLC, and MICROSOFT
CORPORATION,

Defendants.

Case No. 1:23-cv-08292-SHS;

Case No. 1:23-cv-10211-SHS

**JOINT DECLARATION OF
PLAINTIFFS' INTERIM CO-LEAD
COUNSEL IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
MOTION TO INTERVENE AND
DISMISS, STAY OR TRANSFER**

We, as Interim Co-Lead Counsel of the Fiction and Nonfiction Authors Class, jointly declare and state as follows:

1. We are Interim Co-Lead Counsel appointed by this Court to represent the Fiction and Nonfiction Authors Classes in this consolidated action.

2. I, Rachel Geman, am a partner at the law firm of Lieff, Cabraser, Heimann & Bernstein, LLP. I am an attorney duly licensed to practice law in the State of New York. I submit this Declaration in support of Plaintiffs' Opposition to the Motion to Intervene and Dismiss, Stay, or Transfer.

3. I, Justin Nelson, am a partner at the law firm of Susman Godfrey, LLP. I am an attorney duly licensed to practice law in the State of Texas and have been admitted in this Court *pro hac vice*. I submit this Declaration in support of Plaintiffs' Opposition to the Motion to Intervene and Dismiss, Stay, or Transfer.

4. I, Scott Sholder, am a partner at the law firm of Cowan, DeBaets, Abrahams, & Sheppard, LLP. I am an attorney duly licensed to practice law in the State of New York. I submit this Declaration in support of Plaintiffs' Opposition to the Motion to Intervene and Dismiss, Stay, or Transfer.

5. Throughout this litigation, we and our respective law firms have been primarily responsible for the prosecution of Plaintiffs' claims on behalf of the Fiction and Nonfiction Authors Classes.

6. We make this Joint Declaration in support of Plaintiffs' Opposition to the Motion to Intervene and Dismiss, Stay, or Transfer. Except where otherwise stated, we each have personal knowledge of the facts set forth in this Joint Declaration based on active participation in

all aspects of the prosecution and resolution of the Action. If called upon to testify, we each could and would testify competently to the truth of the matters stated herein.

I. Case Management Order and Discovery in the Authors Actions

7. On January 19, 2024, the Plaintiffs in the Authors Actions entered into a stipulation with Defendants. *Authors* Dkt. No. 55; *Sancton* Dkt. No. 30. The terms of this stipulation were extensively negotiated by Interim Class Counsel and Defendants.

8. Under the terms of the parties' negotiated stipulation and the subsequent case schedule the parties proposed on January 26, 2024, fact discovery will be completed by September 17, 2024, and expert discovery by December 9, 2024. *Authors* Dkt. No. 62; *Sancton* Dkt. No. 43.

9. In addition, in exchange for an agreement from Interim Class Counsel that summary judgment be adjudicated before class certification, Interim Class Counsel obtained concessions from Defendants, including (a) agreement that full, class-wide discovery is open, (b) an agreement that neither Defendant will seek dismissals under Rule 12; (c) waiver of Defendants' rights to raise one-way intervention defenses; and (d) an expedited schedule under which summary judgment briefing is completed by the end of February 2025.

10. Interim Class Counsel believes each these concessions from Defendants are valuable and will result in an expeditious, efficient resolution of the copyright claims at issue for Plaintiffs in the proposed Classes.

A. *Authors Guild* Discovery Efforts

11. Ms. Geman attests to the facts set forth in this Section I.A.

12. The Fiction Plaintiffs served their First Set of Requests for Production on the OpenAI Defendants November 13, 2023. The OpenAI Defendants served its Responses and Objections to the Fiction Plaintiffs' First Set of Requests for Production on December 22, 2023.

13. The OpenAI Defendants served their First Set of Requests for Production on each named Plaintiff in the Authors Guild case on November 13, 2023. The Fiction Plaintiffs served their Responses to the OpenAI Defendants' First Set of Requests for Production on December 22, 2023.

14. The Fiction Plaintiffs exchanged Initial Disclosures with the OpenAI Defendants on December 22, 2023.

15. The Fiction Plaintiffs sent a detailed meet and confer letter on December 29, 2023 addressing several of the OpenAI Defendants' objections to Plaintiffs Requests for Production.

16. The Fiction Plaintiffs served their First Set of Requests for Admission on the OpenAI Defendants on January 8, 2024. The OpenAI Defendants served their Objections and Responses to Plaintiffs' First Set of Requests for Admission on February 7, 2024.

B. *Alter* Discovery Efforts

17. Mr. Nelson attests to the facts set forth in this Section I.B.

18. The Nonfiction Plaintiffs served their First Set of Requests for Admission on the OpenAI Defendants and Microsoft on December 29, 2023. The OpenAI Defendants served their Responses and Objections to the Nonfiction Plaintiffs' First Set of Requests for Admission on January 29, 2024.

19. The Nonfiction Plaintiffs served their First Set of Requests for Production on the OpenAI Defendants on January 19, 2024. The OpenAI Defendants served their Responses and Objections to the Nonfiction Plaintiffs' First Set of Requests for Production on February 20, 2024.

20. The OpenAI Defendants served their First Set of Requests for Production on the Nonfiction Plaintiffs on January 29, 2024.

C. Consolidated Discovery Efforts

21. The Fiction and Nonfiction Plaintiffs served their First Set of Requests for Production on Microsoft on January 24, 2024. Microsoft served its Responses and Objections to the Fiction and Nonfiction Plaintiffs' First Set of Requests for Production on February 23, 2024.

22. The Fiction and Nonfiction Plaintiff served their Second Set of Requests for Production on the OpenAI Defendants on January 29, 2024.

23. The OpenAI Defendants produced their first collection of responsive documents to the Fiction and Nonfiction Plaintiffs on February 14, 2024.

24. The Fiction and Nonfiction Plaintiffs served their First Set of Interrogatories on the OpenAI Defendants and Microsoft on February 23, 2024.

25. Over the past three months of litigation, the Parties have met and conferred at least five times regarding discovery issues. Among other issues, the Parties have discussed the Defendants' progress on reviewing and editing Plaintiffs' proposed protocol for electronically stored information and Plaintiffs' proposed protective order, the OpenAI Defendants' written objections and responses to Plaintiffs' Requests for Admission, Defendants' written objections and responses to Plaintiffs' Requests for Production, and Defendants' progress on identifying and collecting documents for production in these cases. During the meet and confer, the Parties also discussed the process by which Plaintiffs and their experts might inspect OpenAI's Large Language Models.

26. After several weeks of meeting and conferring, the Fiction and Nonfiction Plaintiffs filed a Letter Motion on February 23, 2023, requesting an informal discovery conference concerning the OpenAI Defendants' refusal to admit or deny Plaintiffs' Requests for Admission.

27. In addition to the discovery efforts discussed above, Plaintiffs are in the process of reviewing the documents produced by Defendants and are preparing to notice initial depositions.

II. Efforts to Contact Proposed Intervenor

28. Since the time the cases were filed, Plaintiffs' Counsel for both the Fiction and Non-Fiction classes collectively have made multiple attempts to contact Proposed Lead Counsel for the Proposed Intervenor Joseph Saveri. There has been one conversation only: on December 6, 2023, Interim Co-Lead Counsel Justin Nelson, Rohit Nath, and Alejandra Salinas had an initial call with Mr. Saveri and other members of his law firm to discuss the cases and the possibility of coordination. Since that December call, Mr. Saveri and his law firm have not responded to subsequent emails or other reach outs.

We declare under penalty of perjury under the laws of the United States and the State of New York and Texas that the foregoing is true and correct to the best of our knowledge. This declaration was executed by Rachel Geman and Scott Sholder in New York, New York and Justin Nelson in Austin, Texas on February 26, 2024.

/s/ Rachel J. Geman

Rachel Geman

/s/ Justin Nelson

Justin Nelson

/s/ Scott Sholder

Scott Sholder